

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUSTIN NIBARGER and  
MINDY MYERS,  
PLAINTIFFS,

vs.

Case No. 09-CV-476-TCK-FHM

JACOB BODE, VAN-PAK, INC. and  
HIRSCHBACH MOTORLINES, INC.,  
DEFENDANTS.

DEMAND FOR JURY TRIAL

**PETITION**

**COMES NOW** the Plaintiffs and for their cause of action alleges and states as follows:

1. That the Plaintiffs are residents of Labette County, Kansas.
2. The Defendants at all times referenced herein operated a tractor trailer in Ottawa County, Oklahoma.
3. The Defendant, Jacob Bode, is a resident of Kentwood, Michigan.
4. The Defendant, Van-Pack, Inc., has a place of business in S. Sioux City, Nebraska and may be served with process through their registered agent, John Paresky, 255 Cadwell Drive, Springfield, MA 01104 or their sister company, Hirschbach Motor Lines, Inc., registered agent, Richard Thrumer, 920 W. 21<sup>st</sup> Street, S. Sioux City, Nebraska 68776.
5. The Defendant, Hirschbach Motor Lines, Inc., operates a business at 2440 9<sup>th</sup> Avenue, S. Sioux City, Nebraska 68776 and may be served with process through it's registered agent, Richard Thrumer, 920 W. 21<sup>st</sup> Street, So Sioux City, Nebraska 68776 and by and through its sister company, Van-Pack, Inc's registered agent, John Peresky, 255 Cadwell Drive, Springfield, MA 01104.

**FIRST CAUSE OF ACTION**

6. On or about September 4, 2005, the Plaintiffs were in an automobile at or near U.S. 69 and County Road East 120 of Ottawa County, Oklahoma, which crashed into Defendant's tractor-trailer.

7. Defendants have a duty to operate their tractor-trailer in a safe and reasonable manner, and to obey all traffic laws of the State of Oklahoma.

8. Defendants failed in the above-mentioned duties and was therefore negligent.

9. Defendants' negligence was the direct and proximate cause of Plaintiffs' injuries herein.

10. Plaintiffs' sustained injuries and damages that were temporary and permanent.

11. As a direct and proximate result of Defendants' negligence, Plaintiffs lost past and future wages and earning capacity has been diminished.

12. Plaintiffs have incurred medical bills for the treatment of their injuries resulting from this collision.

13. As a direct and proximate result of Defendants' negligence, Plaintiffs experienced physical and mental pain and suffering and have lost the ability to perform usual activities, resulting in a diminished quality of life.

**SECOND CAUSE OF ACTION**

14. All allegations and causes of action above are incorporated into this cause of action by reference.

15. Defendants violated state and federal statutes and regulations, including but not limited to 7 O.S. 606, 11 O.S., 1102.

16. Defendants' statutory violations directly and proximately caused Plaintiff's damages and injuries.

17. Defendants are negligent per se based on these statutory and regulatory violations.

### **THIRD CAUSE OF ACTION**

18. All allegations and causes of action above are incorporated into this cause of action by reference.

19. Defendants' actions demonstrate a conscious disregard for the rights and safety of Plaintiffs and the rest of the public, especially while backing a large vehicle at night across a major highway. Plaintiff demands punitive damages against the Defendants.

### **FOURTH CAUSE OF ACTION**

20. All allegations and causes of action above are incorporated into this cause of action by reference.

21. Defendant, Jacob Bode, was the employee, agent, servant, or independent contractor for Defendant, Van-Pack, Inc., which relied upon its sister company, Hirschbach Motor Lines, Inc. to hire qualified drivers. Accordingly, Hirschbach Motor Lines, Inc. and Van-Pack, Inc. is vicariously liable for the acts of Defendant driver and for the causes of each of their actions as described herein.

### **FIFTH CAUSE OF ACTION**

22. All allegations and causes of action above are incorporated into this cause of action by reference.

23. Regardless of the employment or hiring relationship between Defendant, Jacob Bode, or Defendant, Hirschbach Motor Lines, Inc., Van-Pack Inc. is the registered owner of USDOT number 563556 displayed on the tractor unit involved in this collision and is therefore responsible for the acts of the driver of that vehicle during its operation.

### **SIXTH CAUSE OF ACTION**

24. All allegations and causes of action above are incorporated into this cause of action by reference.

25. Defendants, Van-Pack, Inc. and Hirschbach Motor Lines, Inc. have a duty to act reasonably in hiring and retaining of the Defendant driver, Jacob Bode, and to promulgate and enforce rules and regulations to ensure its drivers and vehicles were reasonably safe.

26. Defendants failed in the above-mentioned duties and was therefore negligent.

27. Defendants, Van-Pack, Inc. and/or Hirschbach Motor Lines, Inc.'s negligence was the direct and proximate result of Plaintiffs injuries, including but not limited to all injuries sustained herein.

### **SEVENTH CAUSE OF ACTION**

28. All allegations and causes of action above are incorporated into this cause of action by reference.

29. Defendants violated State and Federal statutes and regulations, including but not limited to 7 O.S. 606 and 11 O.S. 1102.

30. Defendant's statutory violations directly and proximately caused Plaintiff's damages and injuries.

31. Defendants are negligent per se based on these statutory and regulatory violations.

### **EIGHTH CAUSE OF ACTION**

32. All allegations and causes of action above are incorporated into this cause of action by reference.

33. Defendants' actions demonstrate a conscious disregard for the rights and safety of Plaintiffs and the rest of the public. Plaintiff demands punitive damages against Defendants.

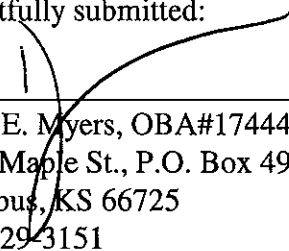
**NINTH CAUSE OF ACTION**

34. All allegations and causes of action above are incorporated into this cause of action by reference.

35. As a direct and proximate result of Defendants' negligence and statutory violations, Plaintiff's significant other has a loss of companionship, society, services, and consortium of each other.

**WHEREFORE** Plaintiffs demands judgment against defendants in an amount in excess of \$10,000.00 for all causes of action above, jointly and severally and for such other and further relief the Court deems just and equitable.

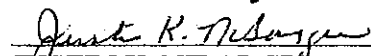
Respectfully submitted:

  
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Robert E. Myers, OBA#17444  
313 E. Maple St., P.O. Box 495  
Columbus, KS 66725  
(620) 429-3151  
Attorney for Plaintiffs

**VERIFICATION**

STATE OF KANSAS                     )  
COUNTY OF CHEROKEE            )ss.

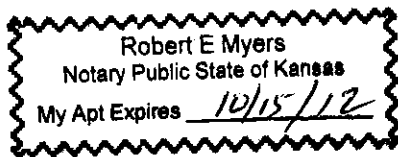
JUSTIN K. NIBARGER, being of lawful age and duly sworn on oath states: that he is the Plaintiff in the above captioned Petition and has read the foregoing and understands the same and the facts set forth are true and correct to the best of his knowledge.

  
JUSTIN K. NIBARGER,  
Plaintiff

Subscribed and sworn to before me this 20<sup>th</sup> day of July, 2009.

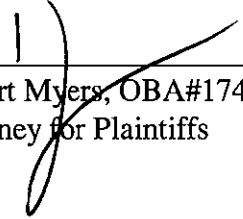
  
NOTARY PUBLIC

My commission expires:



**DEMAND FOR JURY TRIAL**

Plaintiffs demand that all issues in the above entitled case be tried to a jury.

  
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Robert Myers, OBA#17444  
Attorney for Plaintiffs